



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 10815848

Date: NOV. 25, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The Petitioner seeks to employ the Beneficiary as a chief investment officer under the second-preference, immigrant classification for members of the professions with advanced degrees or their equivalents. Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary has the requisite educational credential to qualify for classification as an advanced degree professional.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as an advanced degree professional generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position. *Id.* Labor certification also indicates that the employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If DOL approves a position, an employer must next submit the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS considers whether a beneficiary meets the requirements of a certified position and a requested immigrant visa classification by the petition's priority date.¹ If USCIS approves the petition, a foreign national may finally apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

¹ This petition's priority date is January 5, 2015, the date the DOL received the labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

II. ANALYSIS

A. Requirements for Classification as an Advanced Degree Professional

The Petitioner requests classification of the Beneficiary as an advanced degree professional. The regulation at 8 C.F.R. § 204.5(K)(2) defines the term “advanced degree” as:

any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree.

The accompanying labor certification states the minimum requirements of the offered position of chief investment officer as follows:

H.4	Education: minimum level	Master’s
H.4-B	Major field of study	Finance or Accounting
H.5	Training required?	No
H.6	Experience in the job offered required?	Yes
H.6-A	Number of months	60
H.7	Alternate field of study acceptable?	No
H.8	Alternate combination of education and experience acceptable?	Yes
H.8-A	Level of alternate education	Bachelor’s
H.8-C	Number of years experience acceptable	7
H.9	Foreign educational equivalent acceptable?	Yes
H.10	Experience in an alternate occupation acceptable?	Yes
H.10-A	Number of months experience required	60
H.10-B	Job title of alternate occupation	Senior Financial or Investment Executive
H.14		*

* Knowledge and experience in real estate and business investment in Ireland and the United States. If applicant possesses the required master’s degree in finance or accounting, then 60 months of relevant experience in job offered or as a senior financial or investment executive is required; if applicant possesses a bachelor’s degree in finance or accounting, then 84 months of relevant experience in job offered

or as a senior financial or investment executive is required but any suitable combination of education, training or experience is acceptable.

Section J of the labor certification states that the Beneficiary's highest level of education relevant to the job offered is a bachelor's degree in accounting from the Institute of [REDACTED], completed in 1999. As evidence of this credential the Petitioner submitted copies of certificates of membership showing that the Beneficiary was granted membership as an Associate in the [REDACTED] in November 1988, and Fellow in the [REDACTED] in January 1999.

The Petitioner asserts that the Beneficiary qualifies for advanced degree professional classification by virtue of a foreign equivalent degree to a U.S. baccalaureate degree and more than five years of post-baccalaureate experience in the specialty, in accordance with 8 C.F.R. § 204.5(k)(3)(i)(B).

In his decision the Director found that the Beneficiary had more than five years of qualifying experience. The issue on appeal is whether the Beneficiary has a U.S. or foreign equivalent bachelor's degree to qualify for advanced degree classification.

The Petitioner asserts that the Beneficiary passed a series of courses and examinations with [REDACTED] which culminated in his 1988 Associate membership. The Petitioner submitted two academic equivalency evaluations, the first from The Trustforte Corporation (Trustforte evaluation) asserting that the Beneficiary's post-secondary coursework, passage of qualifying [REDACTED] examinations, and supervised professional experience was equivalent to a bachelor of science degree in accounting from an accredited U.S. college or university; and the second from Arizona International Credential Evaluators (Arizona evaluation) asserting that the Beneficiary's Associate membership in the [REDACTED] was equivalent to a bachelor of science in accounting from an accredited U.S. college or university.

In denying the petition, the Director found that the Beneficiary's certificate of membership in the [REDACTED] is comparable to a combination of education and work experience equal to a bachelor's degree in the United States. The Director further found that the [REDACTED] is a statutory body for the regulation of the profession and not an accredited institution. Citing to *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988), and *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988), the Director stated that, to demonstrate an advanced degree USCIS requires evidence in the form of an official academic record. The Director concluded that the Petitioner did not establish that the [REDACTED] is an accredited academic institution that can confer a degree with an official college or university record.

The Director concluded, therefore, that the Beneficiary did not have a U.S. baccalaureate or a foreign equivalent degree, as required to qualify for advanced degree professional classification.

On appeal, the Petitioner requests that we vacate the decision of the Director, or in the alternative, grant leave to amend the petition.² The Petitioner makes a claim for equitable relief, requesting that we permit amendment of the petition to the skilled worker immigrant classification.³ A petitioner may

² We declined the Petitioner's request for oral argument. See 8 C.F.R. § 103.3(b).

³ This employment-based, "EB-3" category allows a U.S. business to sponsor a foreign national for lawful permanent resident status based on a job offer requiring at least two years of training or experience. See section 203(b)(3)(A)(i) of the Act.

not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).⁴

With the appeal, the Petitioner submits additional evidence detailing the program of academic studies at the [] including:

- The 1888 Royal Charter of the []
- A Certificate of Recognition issued to the [] by the Higher Education and Training Awards Council in Ireland,
- A letter from the Director of Education and Training at the [] (stating that the [] “performs an academic function of educating professional accountants to a level at or above that of a bachelor’s degree”),
- A letter from the president of the National Association of State Boards of Accountancy (NASBA) (stating that “an [Associate Charter Accountant] credential issued by [] is recognized as meeting the bachelor’s education requirement for [Certified Public Accountant] licensure”), and
- A letter from the Adjunct Professor in Business Ethics of [] University (stating that the Associate Charter Accountant has represented a credential of professional and academic attainment equivalent to an honors bachelor’s degree from [] or another Irish university”).

The Petitioner asserts that the Director dismissed the two credential evaluations which found the Beneficiary’s associate membership in the [] to be “a foreign degree evaluated to be the equivalent of a U.S. bachelor’s degree,” and that there is no requirement “that the institution and program issuing the foreign equivalent degree ... be denominated as a ‘college or university.’ It is enough that the title awarded be the result of a four-year or greater program of study at the post-high school level resulting in an ‘academic record’ recognized in the relevant country as the functional equivalent of a bachelor’s degree or higher.” We disagree.

For this classification, advanced degree professional, the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an “official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree.” For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of “an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.” The commentary accompanying the proposed advanced degree professional regulation specifically states that a “baccalaureate means a bachelor’s degree received *from a college or university*, or an equivalent degree.” (Emphasis added.) 56 Fed. Reg. 30703, 30306 (July 5, 1991).

⁴ Before the issuance of a decision, however, a petitioner may request correction of an immigrant classification resulting from a clerical error. USCIS’ website indicates that USCIS allows a classification change only before the issuance of a decision and only for inadvertent misclassifications. The policy does not allow a petitioner to use a single petition to seek approvals in multiple visa categories. USCIS, “Petition Filing and Processing Procedures for Form I-140, Immigrant Petition for Alien Worker,” <https://www.uscis.gov/forms/petition-filing-and-processing-procedures-form-i-140-immigrant-petition-alien-worker> (last visited August 18, 2020). The website also advises petitioners to check their Form I-140 receipt notices to ensure that the notices state correct immigrant categories and, if not, to call USCIS “immediately.” *Id.* Here, the Petitioner does not submit evidence that a request to amend the petition was made before the decision was issued. Nor does the Petitioner assert that the request for advanced degree immigrant classification was an inadvertent misclassification.

Cf. 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of “an official academic record showing that the alien has a degree, *diploma, certificate or similar award* from a college, university, *school or other institution of learning* relating to the area of exceptional ability”). The Petitioner did not submit an official academic record or transcript issued to the Beneficiary by the [] showing that the Beneficiary has a U.S. baccalaureate or the foreign equivalent thereof.

The Trustforte evaluation states that the Beneficiary “completed advanced post-secondary coursework and examinations” at the [] as well as “classes and examinations” leading to his qualification as Associate member in the []. However, the evaluation does not identify what evidence was examined to make the determination that the Beneficiary’s [] program included coursework or classes.

The Arizona evaluation states that the Beneficiary’s education included “both theoretical and practical elements of breadth and depth required for an undergraduate degree in Accounting awarded by accredited colleges and universities in the United States.” The evaluation lists the following supporting documentation:

- The Beneficiary’s curriculum vitae,
- His certificates of membership in the []
- A letter from the [] regarding the standing of its qualifications,
- A sworn statement from the Beneficiary on the training program taken as prerequisite to exams,
- A letter from the [] confirming that the Beneficiary completed a four-year education and examination program, passed exams, and completed formal practical training, and
- A statement of results detailing the Beneficiary’s successful completion of examinations.

The evaluation does not indicate that any official record or academic transcript was submitted or relied upon in its determination. The [] letters discussing its standing and verifying that the Beneficiary completed an academic program cannot alone be considered an official academic record. As noted by the Director, the letters contain an illegible signature, do not identify the author, and do not include a detailed account of the Beneficiary’s academic coursework or record. The statement of results similarly makes no mention of academic coursework, but rather states that the Beneficiary passed the [] examinations.

Rather, as evidence of the Beneficiary’s academic record with the [] the Petitioner submits an unsigned email, titled “Sworn Statement,” from the Beneficiary attesting that he completed one year (two semesters) of “full-time college” with the [] and three years of “work” and “on-the-job” training. It is the Petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, the Petitioner relies only on testimonial evidence from the Beneficiary to establish his claimed academic coursework with the [] without providing independent, objective evidence in support of this testimony. The Petitioner did not submit any official transcript and has not indicated

why it cannot. Additionally, as the Beneficiary's sworn statement makes clear, the [] certificate is based on a substantial "work" component, rather than academic studies.

In order to have education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree (plus five years of progressive experience in the specialty). *See* 8 C.F.R. § 204.5(k)(2). A United States baccalaureate degree is generally found to require four years of education. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree (plus five years of progressive experience in the specialty). Where the analysis of the beneficiary's credentials relies on a combination of work and/or multiple lesser degrees, the result would be the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree." Here, the Beneficiary's statement demonstrates that his Associate membership in the [] is based on a combination of one year of academic training and three years of work. Therefore, the Beneficiary does not have a completed bachelor's degree and is not eligible for the requested advanced degree professional classification.

The Petitioner points to the additional evidence submitted on appeal (the letters from the [] the NASBA and the Adjunct Professor) as evidence that Associate membership in the [] is recognized as the foreign equivalent of a degree that qualifies the Beneficiary as a member of the professions with an advanced degree. As noted above, while passage of the [] final examination and associate membership in the [] may be comparable to a U.S. baccalaureate or a foreign equivalent degree, these credentials do not constitute a foreign equivalent degree to a U.S. baccalaureate degree as required under the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) to qualify the Beneficiary for classification as an advanced degree professional under section 203(b)(2) of the Act. The Petitioner has not established that the [] is an academic institution that can confer an actual degree with an official college or university record. *See Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (finding USCIS was justified in concluding that chartered accountant membership was not a college or university "degree" for purposes of classification as a member of the professions holding an advanced degree).

The Petitioner disagrees with the Director's reliance on two United States District Court decisions to conclude that the [] is not an accredited institution and that an individual with a degree from an unaccredited institution does not qualify as a member of the professions holding an advanced degree.⁵ We concur that these cases do not directly apply to the instant petition.⁶ Nonetheless, for the reasons explained above, the Beneficiary is not eligible for classification as an advanced degree professional based on Associate membership in the []

⁵ *Matter of Yau*, 13 T&N Dec. 75 (Reg'l Comm'r 1968), *aff'd*, *Yau v. Distr. Dir. of U.S. INS*, 293 F. Supp. 717 (C.D. Cal. 1968), and *Tang v. Distr. Dir. of U.S. INS*, 298 F.Supp. 413 (C.D. Cal. 1969), *aff'd*, 433 F.2d 1311 (9th Cir. 1970).

⁶ The holding of these cases pertains to the former Group II, Schedule A blanket certification regulations which specifically required a degree from an accredited U.S. college or experience or a combination of experience and education equivalent to such a degree. Further, both of these cases pre-date the regulation at 8 C.F.R. § 204.5(k)(2), which defines the term "advanced degree."

The Petitioner also asserts that the Director's decision was based on derogatory material not previously provided to the Petitioner. If an adverse decision stems from derogatory information of which a petitioner is unaware, USCIS must first notify the petitioner of the information and afford it an opportunity to respond. *See* 8 C.F.R. § 103.2(b)(16)(i). Before deciding this matter, the Director issued the Petitioner a written request for additional evidence (RFE) and allowed the Petitioner the maximum period of time for response. The RFE notified the Petitioner that the Beneficiary's credentials from the [] did not include transcripts or indicate "completing courses in a field of study, or a degree earned." Addressing the Trustforte evaluation specifically, the RFE also notified the Petitioner that the record did not include evidence "establishing that the Beneficiary earned a U.S. 4-year degree (or foreign equivalent degree) or completed any courses." Therefore, we find that the RFE provided sufficient notice to the Petitioner of the deficiencies in its submission and afforded the Petitioner an opportunity to respond and supplement the record.

Based on the foregoing analysis we conclude that the Petitioner has not established that the Beneficiary has a foreign equivalent degree to a U.S. baccalaureate degree to qualify for classification as an advanced degree professional. The appeal is denied on this basis. However, we note a number of additional issues below that must be addressed in any further filings.

B. Minimum Requirements of the Labor Certification

In her decision, the Director concluded that the Beneficiary's educational credentials did not support the requested immigrant visa classification of advanced degree professional but did not address whether the Beneficiary met the minimum requirements as set forth on the accompanying labor certification. The Petitioner, however, raises this on appeal. Because we have found that the Beneficiary does not qualify for the requested classification, we conclude that the petition, as filed, cannot be approved and we reserve on the issue of whether the Beneficiary meets the terms of the certified labor certification.

C. Ability to Perform the Job Duties of the Offered Position

Before issuing her decision in this case, the Director issued the Petitioner a Notice of Intent to Deny (NOID) the petition. The Director notified the Petitioner that she intended to deny the petition because the job offer appeared to be invalid, noting that the Beneficiary had been "arrested and extradited to Ireland where he was subsequently convicted of fraud." In response to the NOID, the Petitioner stated its continuing intent to offer the position to the Beneficiary, and noted that the Beneficiary's future inadmissibility should not be considered in adjudicating an employment-based immigrant petition. The Petitioner also submitted a statement from the Beneficiary's solicitor in Ireland, warrants for the Beneficiary's arrest, and the indictment detailing the Beneficiary's offenses.⁷

⁷ The indictment reflects that the Beneficiary, an officer of [], conspired with others to defraud by creating the false and misleading impression that deposits to the bank in [] were approximately [] billion larger in amount than they really were, and with the intention of making a gain for himself, furnished misleading, false or deceptive market information. He was charged with [] counts, including:

- Giving unlawful financial assistance for the purpose of, or in connection with, the purchase of shares.
- Making a false instrument.
- Falsification of a document.
- Disclosing information that was false or misleading in a material respect in an interim

We agree with the Petitioner that it need not establish a beneficiary's admissibility with the instant petition. The Act authorizes officers of the U.S. Departments of State and Homeland Security to make admissibility findings on applications for: immigrant visas at consulates, *see* section 101(a)(13)(A) of the Act, 8 U.S.C. § 1101(a)(13)(A); admissions at ports of entry, *see* section 202(a)(1)(B) of the Act, 8 U.S.C. § 1152(a)(1)(B); and adjustments of status at USCIS offices, *see* section 245 of the Act, 8 U.S.C. § 1255. Thus, these I-140 petition proceedings are not the appropriate forum to determine the Beneficiary's admissibility. *See Matter of O-*, 8 I&N Dec. 295, 296-98 (BIA 1959). Nor would a finding of his inadmissibility warrant the I-140 petition's denial. However, we do find that the Beneficiary's arrest, extradition and subsequent conviction for fraud may be relevant to his ability to register as an investment adviser⁸ if required for the position offered.⁹ Therefore, with any further filings, the Petitioner must establish that the Beneficiary is able to perform the job duties as described on the accompanying labor certification.

III. THE ABILITY TO PAY THE PROFFERED WAGE

Also unaddressed by the Director, the record does not establish the Petitioner's ability to pay the proffered wage of the offered position. A petitioner must demonstrate its continuing ability to pay a proffered wage, from a petition's priority date until a beneficiary obtains lawful permanent residence. *See* 8 C.F.R. § 204.5(g)(2). If a petitioner employs less than 100 people, as in this case, evidence of ability to pay must include copies of annual reports, federal tax returns, or audited financial statements. *Id.*

Here, the labor certification states the proffered wage of the offered position of chief investment officer as \$220,000 annually, and the petition states that the Petitioner has two employees. As previously

management report.

⁸ The U.S. Securities and Exchange Commission (SEC) oversees the securities industry in the United States, including securities exchanges, brokers and dealers, investment advisers, and mutual funds. The rules and regulations governing federal investment advisers fall under the Investment Advisers Act of 1940 (the Advisers Act), 15 U.S.C. § 80b-1, 17 C.F.R. § 275. Section 202(a)(11) of the Advisers Act generally defines an investment adviser as, "any person or firm that: (1) for compensation; (2) is engaged in the business of; (3) providing advice, making recommendations, issuing reports, or furnishing analyses on securities, either directly or through publications." The SEC notes that "advice about market trends" is considered advice about securities. *See General Information on the Regulation of Investment Advisers* available at <https://www.sec.gov/divisions/investment/iaregulation/memoia.htm>. The state of New York similarly defines investment advisers and requires registration, either with the state or the SEC, prior to engaging in any investment adviser activities. *See* N.Y. Gen. Bus. § 359-eee.

⁹ 15 U.S.C. § 80a-9 identifies persons deemed ineligible for service with investment companies, and persons whom the SEC may prohibit from serving or acting as an employee of an investment adviser. This includes any person who within 10 years has been convicted of any felony or misdemeanor, including by a foreign court of competent jurisdiction, arising out of such person's conduct as an investment adviser or bank, or as an employee of any investment company, bank, or insurance company. 15 U.S.C. § 80a-9(a)-(b).

The job duties as set forth on the labor certification appear to meet the definition of an investment adviser under federal and state law. However, the accompanying labor certification does not include any requirement that the individual filling the offered position of chief investment officer be in compliance with the registration requirements or eligible for registration. A petitioner must list the actual minimum requirements for the offered position on the labor certification as required by 20 C.F.R. § 656.17(i)(1). This issue should be addressed in any further filings.

noted, the petition's priority date is January 5, 2015. The record includes the Petitioner's 2014 Form 1065, U.S Return of Partnership Income.

The record lacks the evidence required by the regulations of the Petitioner's ability to pay the proffered wage from the petition's priority date onward. In any future filings in this matter, the Petitioner must submit copies of its annual reports, federal tax returns, or audited financial statements from 2015, the year of the petition's priority date, through the present.

IV. ADDITIONAL INCONSISTENCIES

The petition and accompanying labor certification reflect that the Petitioner is an investment management company established in 2010, with its primary address in [REDACTED] and employing one to two employees. The petition, labor certification and supporting documents identify [REDACTED] and [REDACTED] as "Member" and "Managing Member" of the Petitioner, respectively.

The record includes multiple addresses for the Petitioner, including two in [REDACTED] and one in [REDACTED] (listed on the Petitioner's 2014 tax return). However, online, open source research reveals that the Petitioner's business address is a residence in [REDACTED] (a different address than is listed on the tax return), and that its two [REDACTED] addresses, including the worksite listed on the petition, are affiliated with multiple businesses. Although the record does not include the Petitioner's website, an online search for the Petitioner identifies a website for a similarly named investment company located in [REDACTED] Washington. A review of that company's website does not indicate any business operation in [REDACTED] or any association with either the Petitioner's Member or Managing Member involved with the instant petition. These inconsistencies cast doubt on the details of the proffered position.

The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* In any future proceedings, the Petitioner must submit objective evidence to resolve these inconsistencies, including verification of its existence and valid operating status, and its physical address.

V. CONCLUSION

The Petitioner has not established that the Beneficiary is in possession of an academic credential that qualifies him for the requested classification of advanced degree professional. In any further filings, the Petitioner must demonstrate that it has the continuing ability to pay the proffered wage from the priority date onward. Additionally, the Petitioner must resolve multiple inconsistencies in the record relating to its existence and the Beneficiary's ability to perform the job duties. The appeal will be dismissed.

ORDER: The appeal is dismissed.